

SENATE RECORD VOTE ANALYSIS

104th Congress
1st Session

Vote No. 50

January 26, 1995, 4:12 pm
Page S-1591 Temp. Record

UNFUNDED MANDATES/Social Security & BBA Implementing Legislation

SUBJECT: Unfunded Mandate Reform Act of 1995 . . . S. 1. Reid motion to table the Kempthorne perfecting amendment No. 196 to the Harkin amendment No. 190.

ACTION: MOTION TO TABLE FAILED, 44-56

SYNOPSIS: Pertinent votes on this legislation include Nos. 15-41, 43-45, 47-49, and 51-61.

As reported by the Governmental Affairs Committee and the Budget Committee, S. 1, the Unfunded Mandate Reform Act of 1995, will create 2 majority (51-vote) points of order in the Senate. The first will lie against the consideration of a bill or joint resolution reported by an authorizing committee if it contains mandates and if Congressional Budget Office (CBO) cost estimates on those mandates are unavailable. The second point of order will lie against the consideration of a bill, joint resolution, motion, amendment, or conference report that will cause the total cost of unfunded intergovernmental mandates in the legislation to exceed \$50 million.

The Harkin amendment would express the sense of the Senate that "any joint resolution providing for a balanced budget amendment to the United States Constitution passed by the Senate shall specifically exclude social security from the calculations used to determine if the Federal Budget is in balance." The amendment would also make 13 findings on the Social Security program, including that it is a contributory program.

The Kempthorne perfecting amendment to the Harkin amendment would strike the provisions of the Harkin amendment and would insert that it is the sense of the Senate that "any legislation required to implement a balanced budget amendment to the United States Constitution shall specifically prevent social security benefits from being reduced or social security taxes from being increased to meet the balanced budget requirement." The amendment would also make 11 findings on the Social Security program, including that it is financed through payroll taxes and that Social Security beneficiaries deserve to be reassured that their benefits will not be subject to cuts and their social security payroll taxes will not be increased as a result of legislation to implement a balanced budget amendment to the United States Constitution.

Debate was limited by unanimous consent. Following debate, Senator Reid moved to table the Kempthorne amendment. Generally, those favoring the motion to table opposed the amendment; those opposing the motion to table favored the amendment.

(See other side)

YEAS (44)			NAYS (56)			NOT VOTING (0)	
Republicans (4 or 8%)	Democrats (40 or 85%)		Republicans (49 or 92%)	Democrats (7 or 15%)		Republicans (0)	Democrats (0)
Chafee	Akaka	Harkin	Abraham	Hutchison	Campbell	EXPLANATION OF ABSENCE: 1—Official Business 2—Necessarily Absent 3—Illness 4—Other SYMBOLS: AY—Announced Yea AN—Announced Nay PY—Paired Yea PN—Paired Nay	
Hatfield	Baucus	Inouye	Ashcroft	Inhofe	Heflin		
Jeffords	Biden	Johnston	Bennett	Kassebaum	Hollings		
Packwood	Bingaman	Kennedy	Bond	Kempthorne	Kerry		
	Boxer	Kerrey	Brown	Kyl	Mikulski		
	Bradley	Kohl	Burns	Lott	Moseley-Braun		
	Breaux	Lautenberg	Coats	Lugar	Simon		
	Bryan	Leahy	Cochran	Mack			
	Bumpers	Levin	Cohen	McCain			
	Byrd	Lieberman	Coverdell	McConnell			
	Conrad	Moynihan	Craig	Murkowski			
	Daschle	Murray	D'Amato	Nickles			
	Dodd	Nunn	DeWine	Pressler			
	Dorgan	Pell	Dole	Roth			
	Exon	Pryor	Domenici	Santorum			
	Feingold	Reid	Faircloth	Shelby			
	Feinstein	Robb	Frist	Simpson			
	Ford	Rockefeller	Gorton	Smith, Bob			
	Glenn	Sarbanes	Gramm	Snowe			
	Graham	Wellstone	Grams	Specter			
			Grassley	Stevens			
			Gregg	Thomas			
			Hatch	Thompson			
			Helms	Thurmond			
				Warner			

NOTE: Following the vote, the Senate voted in favor of the Kempthorne amendment (see vote No. 51). It then rejected a Harkin amendment to change the Harkin amendment, as amended, back to its original form (see vote No. 52). Finally, it adopted the Harkin amendment, as amended, by voice vote.

Those favoring the motion to table the Kempthorne amendment contended:

Argument 1:

The Kempthorne amendment is the biggest farce on the senior citizens of America that has been attempted in some time. The underlying Harkin amendment would provide real protection for the elderly by enshrining Social Security in the Constitution. Saying we want protection for Social Security in implementing legislation, as the Kempthorne amendment proposes, is far different than saying we want constitutional protection. Laws are easily changed--the only way we can be sure to protect the Social Security trust fund is by giving it constitutional protection.

Some Senators have suggested that we do not need such a high level of protection; "trust us," they say, "we all want to protect Social Security." These voices, which are coming predominantly from the Republican side of the aisle, cannot be trusted. We do not doubt that they mean what they say, but we also know that actions speak louder than words. Thus the fact that the Senate Judiciary Committee, on a nearly party-line vote, voted not to exempt Social Security surpluses from budget calculations in achieving a balanced budget, concerns us. When we couple this fact with the recent pie-in-the-sky assurances from Republicans that they are going to cut taxes, increase defense spending, and balance the budget, we have to wonder where they plan on getting the money they are going to need. Senators may mean well now, but when push comes to shove, we fear that Senators may rethink their opposition to raiding the Social Security trust fund. Passing the Kempthorne fig leaf, in essence, would be saying that we think it should only take a majority vote of 51 Senators to rob Social Security. Passing the Harkin amendment, on the other hand, would be saying that we think it should be made a constitutional offense to steal from Social Security.

The main objection our colleagues have raised to exempting Social Security from a constitutional balanced budget amendment is that they say it could be used as a back-door means of deficit spending by expanding the programs that fall under Social Security. However, we point out that by law the Social Security trust fund can only be used for Social Security--veterans programs, welfare programs, and other programs are not part of this program. Even if they did become part, though, we must point out that the result would not be that benefits for the elderly would be used to balance the budget--by the Constitution, they still could not.

The Social Security trust fund must remain inviolate. Every penny that goes into that fund is used to purchase United States securities. Right now, the fund has a surplus. Some of us who support the Harkin amendment are satisfied that the Social Security trust fund is comprised of U.S. debt instruments, some of us are concerned that we spend everything that we take in for Social Security and replace it with IOU's. We agree, though, that Social Security should be kept separate from budget calculations to achieve a balanced budget. Social Security is not driving the deficit, and thus should not be included in any solution. Decisions on the Social Security program should be made solely as they relate to that program. Changing the program simply to save money would be unjust; the budget should not be balanced on the backs of our senior citizens by robbing their Social Security pensions.

Social Security has been weakened before, and we believe that a balanced budget amendment to the Constitution will greatly increase pressure to raid its trust fund. The only sure protection we can pass is a constitutional protection, as advocated by the Harkin amendment. Statutory language, as favored by the Kempthorne amendment, is unacceptable because statutory language can be changed by a majority vote. We therefore urge the tabling of the Kempthorne amendment.

Argument 2:

A pox on both your houses. Without casting aspersions on any individual Senators, because we admit that some Senators may be well-meaning in their support for either the Harkin or Kempthorne amendments, we are not going to pretend that we do not understand the gamesmanship that is at play here. The Harkin amendment is a fine amendment for any Senator who wishes to kill a balanced budget amendment to the Constitution but who does not have the honesty or courage to admit it. It employs the well-known third electrical rail of politics, Social Security--touch it and die. The Kempthorne amendment responds with the usual political dodge--a cover-your-backside vote. We wish Senators, for once, would just have the nerve to say if they are "for or against" and stop this type of disreputable political jockeying. For our part, we will vote to table both amendments, because we strongly oppose this attempt to kill a balanced budget amendment to the Constitution.

Those opposing the motion to table contended:

The Harkin amendment is not about Social Security; it is about killing a balanced budget amendment to the Constitution or rendering it meaningless before it is passed. We do not doubt the motivations of the sponsor of this amendment or the motivations of the handful of Senators who have expounded in its defense; we are sure that they have the best interests of senior citizens at heart and simply misunderstand

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the effects of their own amendment. We may doubt the motives of other supporters of the Harkin amendment, but, in all candor, the purity of Senators' motives is irrelevant, because whether by ignorance or design the Harkin amendment would destroy Social Security, damage the Constitution, and allow our country to continue careening toward bankruptcy.

Before making a proper evaluation of either the Harkin or the Kempthorne amendments, Senators must first have an appreciation of the history and operations of the Social Security System. The system was first signed into law in the 1930's. At the time, it was designed to be a supplemental retirement system only. Those Americans who were required to enter the system were assessed a payroll tax, and their employers were assessed an equal amount. Originally, the total assessed amount was 2 percent. The amount of an individual's income that has been subject to the Social Security tax has always been capped, with one recent exception (the cap has risen from \$3,000 in 1937 to \$61,200 today; however, starting in 1994, no cap has been put on income taxed for Medicare, which was added to Social Security in 1965). Additionally, all individuals, regardless of income, have been taxed at the same rate. The combination of a tax cap and a flat tax rate have led some observers to charge that the system is regressive. However, this charge is false, because the payment of benefits has always been steeply progressive; the return to low-income individuals on their income is much greater than it is to high-income individuals. Higher-income individuals are taxed at the same rate and receive less benefits. Thus, the Social Security system is regressive only in that the very wealthy do not pay Social Security taxes on most of their income. For the most part, it is a progressive system designed to make the middle-class subsidize the retirement of poorer Americans.

Over the years, politicians have found it politically advantageous to increase retirement benefits. Additionally, lengthening life-spans in America have greatly increased the number of people collecting benefits, and they are collecting benefits for greater periods of time. A more recent change is that declining birthrates have begun to lower the ratio of current workers paying into the system and current retirees collecting benefits (the present ratio is down to 3.2 to 1). These factors have contributed to the gradual increase in the payroll tax, which is up to 15.3 percent. Social Security is now the main source of retirement income for most Americans, instead of a supplemental source.

Changes to the Social Security program have not been limited to adjustments in taxes and benefits. Over the years it has taken on many roles besides providing retirement income to the elderly. In 1956 a new trust fund was added to provide disability payments. Part of the payroll tax is dedicated to this trust fund. In 1965, Medicaid and Medicare were under the control of Social Security, though largely financed by general revenues. Part of Medicare still is, with its own trust fund that is financed by the payroll tax. For a time, the Aid to Dependent Children's program (the forerunner to the Federal Government's main welfare program, the Aid to Families with Dependent Children (AFDC) program) was a Social Security program that was paid for through appropriations rather than the retirement trust fund. Finally, the Supplemental Security Income (SSI) program was added in 1972 as a program that is funded out of the general fund of the Treasury.

As Social Security has grown more vital to an increasing number of retirees, its political significance has also appropriately grown. Some Members have unscrupulously used this significance for political demagoguery. For example, in the early 1980's, when it was clear that all reserves would soon be depleted as a result of the high inflation and economic stagnation of the Carter years, then-President Reagan urged reforms to prevent the system from going bankrupt. Then-Speaker O'Neill used the occasion to accuse the President of wanting to steal retirement checks from little old ladies. After a series of accusations, though, Members on both sides of the aisle and both Houses sat down with the Administration to work out a solution to a problem that everyone knew existed and wanted to solve.

The Federal Government has numerous trust funds for various purposes, which operate not as bank accounts but as promises to spend money on those purposes. Some trust funds operate as entitlement accounts, like Social Security (except for its SSI component) while others are appropriated accounts. When money is raised for a trust fund, that money goes into the general fund of the Treasury, and the Treasury issues debt instruments to the trust fund for the amount of money collected. These IOU's are redeemed as money is used from the trust fund for its stated purpose, whether through entitlement payments or as the result of appropriations. If money is raised for a trust fund faster than it is spent, obviously its pile of IOU's grows. The money that is raised for these IOU's and placed in the general fund does not remain in the general fund--it is spent, unless the Government runs a surplus. Of course, as all Senators are aware, in recent decades Congress has used its power over the purse strings to spend some \$4.5 trillion that was not even in its purse.

Some Members, observing the rapid growth of the Social Security trust fund, made a charge of "thievery" in 1990 based on the revisionist, and patently false, claim that the 1983 reform of Social Security was intended to generate huge surpluses that would be banked to forestall future insolvency. (Interestingly enough, many of the very same Senators who so fervently made the thievery charge, saying that Social Security trust funds should forever be inviolate, 3 years later supported the imposition of a tax on Social Security retirement income. That tax, which passed despite Republican efforts to kill it, marks the first time ever that Social Security retirement income was taxed to pay for a program unrelated to retirement). The truth is that there was never any intent of changing the system's pay-as-you-go status; everyone knew that the 1980 agreement was only a temporary solution and that further changes were needed. The outcome of this false charge, nevertheless, was enactment of a requirement to take Social Security "off-budget," which in practice, unfortunately, has worked only as an accounting gimmick. Budget Act deficit targets were increased for each year by the expected amount of Social Security surpluses, with the intention then of having everyone say that the annual deficit equalled the new deficit targets. However, no one has done so--for example, the current deficit number that is spouted about is \$70 billion lower than the deficit target, because President Clinton and the Democrats include Social Security in all their claims of deficit reduction.

Despite our disagreement over the purposes of the 1983 reform, we agree that the concern expressed in 1990 over Social Security's future was, and still is, valid. Over the long-term, the system is not in close actuarial balance. On average, benefits that are given to current retirees

exceed the amount, adjusted for inflation, that they paid into the system. With Americans living longer and having fewer babies, the ratio of current workers to current retirees will drop to 2:1 in the not-too-distant future. As early as the year 2013 outlays will exceed receipts. Thus, to redeem fully the Social Security Treasury notes that will be turned in to provide benefits, more revenue than is collected from payroll taxes is going to have to be provided. Other taxes will then have to be raised or other spending will have to be cut if changes are not made to the Social Security program itself. By the year 2029 the reserve of IOU's will be totally exhausted, and current outlays will greatly outstrip current receipts.

With this background in mind, we invite our colleagues to turn their attention to the two pending amendments. The underlying Harkin amendment would express the sense of the Congress that Social Security should be exempted from any balanced budget amendment to the Constitution. Doing so would be monumentally destructive both to the Social Security system and to efforts to balance the budget. If a balanced budget amendment were passed with an exemption for Social Security, Members would be less pressured to fix Social Security's looming insolvency, because the Constitution would not prohibit its continued operation in the red. Members would quickly realize that this exemption would allow them to escape facing up to the difficult actuarial reality that the system cannot continue with the present tax and benefit scheme. In the long run, though, this would likely create resentment of the Social Security system. In a few years, when the Federal budget is in balance as a result of the constitutional amendment, and Social Security has switched from running surpluses to running huge deficits, Americans will demand reforms. We doubt they will call for ever higher taxes on the dwindling number of workers; it is far more likely that they will call for cuts or delays in benefits.

An even greater problem for Social Security would occur if the proponents of the Harkin amendment succeeded in their stated goal of stitching an exemption for this program into the Constitution. Members, when they saw that Social Security was the sole area of Government which was permitted to deficit spend, would suddenly discover that many more programs should fall under its ambit. Even without this incentive Congress has in the past added general welfare and health programs to Social Security's functions; we expect that making it the only official, constitutional, off-budget, deficit-spending program would lead to an avalanche of new Social Security programs. Suddenly, the main retirement system of most Americans would no longer be an independent, self-financing system; instead, it would only be one of many programs called "Social Security" on which Members were allowed to deficit spend. Perversely, writing a special protection for Social Security into the Constitution would destroy any chance of protecting its unique status.

Writing a balanced budget exception for Social Security into the Constitution would also shake the foundations of our constitutional form of government. If a balanced budget amendment was adopted with an exception for Social Security, it would mark the first time that a statutory provision was ever included in the Constitution. Such an inclusion would be a horrible precedent. The Constitution should be a document of broad themes and principles; it should not have program language in it the meaning of which can be changed by simple majority votes in Congress. What strength would any provision of the Constitution have if its meaning could be changed by any statute passed by a transient majority? If a majority votes that "Social Security" means welfare, health care, Head Start, Food Stamps, or even Members' pay, then that majority will have changed the meaning of the Constitution. Even midnight voice votes on controversial issues could be used to change drastically this document that anchors and defines our republic. Passing a balanced budget amendment with a Social Security escape clause would thus grievously wound our Constitution and our country.

We think that many of the Harkin amendment's proponents are aware of the damage that would be caused if a balanced budget exemption for Social Security were written into the Constitution, yet they favor it anyway. Some Senators may be hoping eventually to use the absence of an escape clause as an excuse to vote against the balanced budget amendment—they can tell their constituents that they favored passage, but not at the price of letting Social Security be used to balance the budget. Others may actually favor including it, so that they can brag that they agreed to balance the budget, though they have every intention of weaseling around the Constitution by redefining their favorite programs as "Social Security" for deficit-spending purposes.

Simply by proposing the horrendous Harkin amendment our colleagues have made it necessary for us to offer an amendment on this topic. We cannot let stand our colleagues' cynical allegations that Senators plan on taking Social Security checks to balance the budget. Every Senator knows that this program is the most sacrosanct, politically inviolable program in the budget. Still, when the very lives of millions of elderly Americans depend on the safety of Social Security, our colleagues' demagoguery will have a frightening effect if not countered. The Kempthorne amendment offers the reassurance that Social Security recipients need. It expresses the sense of the Congress that any implementing legislation to balance the Federal budget will not be dependent on Social Security tax increases or benefit cuts. This statement is accurate—not one Senator favors tax increases or benefit cuts in Social Security for the purpose of balancing the budget. Changes will undoubtedly be required to the program over the long term if it is to remain solvent, but Senators favor those changes to save Social Security, not to balance the budget.

We have no doubt that when reforms are enacted we will yet again be accused of trying to rob retirees, but that is the nature of the beast. Some Members will always be willing to play cynically on the fears of our vulnerable elderly for their own political ends. We urge our colleagues to resist these unjust accusations. We urge them to do what is right: vote against the motion to table the Kempthorne amendment in order to reassure elderly Americans, and then join us in voting to table the destructive Harkin amendment.